

ILLINOIS POLLUTION CONTROL BOARD
February 15, 2024

DYNEGY MIDWEST GENERATION,)
LLC,)
)
Petitioner,)
)
v.) PCB 24-53
) (Petition for review – Alternative Source
ILLINOIS ENVIRONMENTAL) Demonstration)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Van Wie):

On February 2, 2024, Dynegy Midwest Generation, LLC (DMG) timely filed a petition (Pet.) asking the Board to review an alternative source demonstration (ASD) determination of the Illinois Environmental Protection Agency (Agency or IEPA) under the coal combustion residual (CCR) surface impoundment rules in Part 845. *See* 35 Ill. Adm. Code 105.200 *et. seq.* and 845.650(e). The ASD determination concerns a CCR surface impoundment referred to as the New East Ash Pond at DMG’s Vermilion Power Plant, located approximately four miles northeast of the Village of Oakwood in Vermilion County (facility). Additionally, DMG’s petition included a motion for a partial stay of the Part 845 requirements as they apply to exceedances of the groundwater protection standards for chloride, lithium, sulfate, and total dissolved solids (TDS) at multiple wells at the facility. For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion for partial stay.

Under the Board’s rules, persons may petition the Board to review the final decisions of agencies by filing the petition within 35 days after the date of service of the final agency decision. *See* 35 Ill. Adm. Code 105.206(a). In this case, the Agency issued a non-concurrence with DMG’s New East Ash Pond ASD on December 28, 2023. DMG reports the determination was served upon it on January 2, 2024. Pet. at 1. The Board’s CCR surface impoundment rules on ASD specify that an owner or operator of a CCR surface impoundment may, within 60 days after the detected exceedance of a groundwater protection standard, submit a demonstration to the Agency that a source other than the CCR surface impoundment caused the contamination. *See* 35 Ill. Adm. Code 845.650(e). If the Agency does not concur with the ASD, the owner or operator may petition the Board for review of the non-concurrence. *See*, 35 Ill. Adm. Code 845.650(e)(7). DMG’s petition meets the content requirements of 35 Ill. Adm. Code 105.200 *et. seq.* and 845.650(e)(7).

The Board accepts the petition for hearing. DMG has the burden of proof. 415 ILCS 5/40(a)(1) (2022); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its final decision. *See* 35 Ill. Adm. Code 105.214(a).

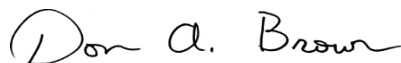
Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110. Hearings will be scheduled and completed in a timely manner.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 18, 2024, which is the first business day following the 30th day after the Board received DMG's petition. *See* 35 Ill. Adm. Code 105.116(a), 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.212(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

Accompanying DMG's petition for review is a motion for a partial stay of the requirements of 35 Ill. Adm. Code 845.650(d), 845.660, 845.670, and 845.680 as they apply to the exceedances of the chloride, lithium, sulfate, and TDS groundwater protection standards at the facility. Pet. at 21. DMG asks for a stay, "until the later of (a) the Board's final resolution of this Petition, or (b) if this Petition is granted, IEPA's issuance of a concurrence." *Id.* IEPA has not filed a response to the petition or to the motion for a partial stay. Part 845 provides that, "[t]he filing of a petition for review under subsection (e)(7) does not automatically stay any requirements of this Part as to the owner or operator, including the 90-day deadline to initiate an assessment of corrective measures." 35 Ill. Adm. Code 845(e)(7). The Board reserves ruling on the motion for partial stay.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 15, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.